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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/559,629

12/06/2005

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/559,629	Applicant(s) KOBAYASHI ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 4 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9=13--6:30-3--06;12-08-05</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim2, 6-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim contains the recitation PLA, which appears to be the abbreviation for phospholipase A (page 5 of the specification). An amendment to the claims inserting -(phospholipase A)- after PLA in claim 2 would describe what is intended by the recitation PLA.

The process claims are in the passive voice and it is unclear what particular steps are meant in the process. An amendment to the claims converting them to the active voice would overcome the rejection.

In claims 7 and 8 the recitation and/or is confusing because it is unclear if the lysophospholipid is included or not. An amendment to the claims cancelling one term or the other would overcome the rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Corliss (6,113,972) and see examples.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corliss (6,113,972).

Corliss discloses a phytosterol protein complex (abstract). Defatted egg yolk it used as a protein source in the examples. Although lipoprotein is not mentioned in Corliss, one of ordinary skill in the art would expect the protein in Corliss to include lipoprotein. In example 3 the product is made by preparing the egg proteins (example 1), dissolving the egg protein in water, combining lauric acid with phytosterol and mixing the egg protein with the lauric acid/phytosterol solution. . In example 5 the final produce it a white liquid. The claims appear to differ from Corliss in the recitation that the emulsion formed is oil in water emulsion. Both oil and water are present in the composition. One of ordinary skill in the art would expect the composition of Corliss to be an emulsion that is oil in water emulsion

because of the composition of the product. It is appreciated that the particle size of the food in food product is not mentioned but Corliss forms a powdered composition from a flaked product in example 4. To alter the particle size in Corliss would have been within the abilities of one of ordinary skill in the art.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai (7,041,328 or 6,635,777 or WO 00/78162 pr 7,160569).

The three Kawai references and the Kudou reference appear to be similar to one another. The Kawai '777 reference will be specifically discussed in this rejection. Kawai discloses oil in water emulsifier composition containing diglycerides and egg yolk (abstract). Egg yolk is treated with phospholipase A to form an enzyme treated egg yolk with lyso-phospholipid. At column 3, lines 49-60, phytosterols are included in the composition to provide a phytosterol content of up to 10%. The claims appear to differ from Kawai in the recitation of egg lipoprotein but since whole egg is used in the processing steps, one of ordinary skill in the art would expect the egg yolk to contain lipoprotein.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jackesehky (5948463, 6177120, ; 5780095) and Tobita (6660312) are further cited to show enzyme treated egg yolk containing lysophospholipids along with phytosterols.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794